

OCT 31 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARK LOUIS SANDON,

Defendant - Appellant.

No. 03-10484

D.C. No. CR-02-01224-RGS

MEMORANDUM*

On Remand from the United States Supreme Court

Before: W. FLETCHER and FISHER, Circuit Judges, and WINMILL, District Judge.**

In a prior disposition, we affirmed the conviction of defendant-appellant Mark Louis Sandon. Sandon later filed a petition for certiorari with the United States Supreme Court, which granted the petition, vacated our judgment and remanded the case to us for further consideration in light of *United States v. Booker*, 125 S. Ct. 738 (2005). Because the Sentencing Guidelines are no longer

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The Honorable Lynn B. Winmill, Chief United States District Judge for the District of Idaho, sitting by designation.

binding after the Court's decision in *Booker* – and we cannot ascertain whether the district court would have imposed a different sentence under a discretionary regime – we remand to the district court for reconsideration of Sandon's sentence. *See United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc). Sandon's conviction is affirmed for the reasons stated in our prior disposition.

AFFIRMED in part and REMANDED.